

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:- 10.07.2006

Coram:-

The Hon'ble Mr. Justice P.SATHASIVAM
and
The Hon'ble Mr. Justice V.DHANAPALAN

Habeas Corpus Petition No.425 OF 2006

Sundari

... Petitioner

vs.

1. The State of Tamil Nadu,
Rep. by its Secretary,
Prohibition and Excise Department,
Fort St. George,
Chennai 600 009.

2. The Commissioner of Police,
Greater Chennai, Egmore,
Chennai-600 008.

... Respondents

Petition under Article 226 of the Constitution of India for the issuance of writ of habeas corpus to call for the records relating to detention order in Memo No.4/BDFGISV/2006 dated 9-1-2006 on the file of the second respondent, set aside the same, thereby direct the respondents to produce Rakesh, son of Gopinath, the detenu herein, who is now detained and confined in Central Prison, Chennai, before Court and set him at liberty.

For Petitioner : Mr.A.John Britto

For Respondents: Mr.M.Babu Muthu Meeran,
Additional Public Prosecutor.

P.SATHASIVAM, J.

ORDER

The petitioner herein challenges the impugned order of detention, dated 09.01.2006, detaining her grand son by name Rakesh as 'Goonda' as contemplated under the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982).

2. Heard learned counsel for the petitioner as well as learned Additional Public Prosecutor for the respondents.

3. Learned counsel for the petitioner, at the foremost, submitted that there was delay in disposal of the representation of the detenu.

4. The particulars furnished by the learned Additional Public Prosecutor show that the representation was received by the Government on 22.2.2006; remarks were called for on 23.02.2006; remarks were received on 28.02.2006; File was dealt with by the Under Secretary and Deputy Secretary on 01.03.2006; Minister for Prohibition and Excise passed orders on 02.03.2006, Rejection Letter was prepared on 03.03.2006; the said letter was sent to the detenu on 06.03.2006 and served to him on 07.03.2006. If we exclude the intervening holidays, we are of the view that there is no let up or delay as claimed by the petitioner. On the other hand, we are satisfied that the representation of the detenu was duly considered and disposed of without undue delay, hence, we reject the said contention.

5. Learned counsel for the petitioner next contended that though the detention order was passed on 09.01.2006, the said order alone was served to the detenu on 10.01.2006 and the grounds of detention and other connected materials were served only on 13.01.2006 with a delay of five days. This is unconstitutional as the detenu was not informed about the grounds of detention at the time of serving the detention order.

6. The aforesaid contention is liable to be rejected since it is not in dispute that the detention order was served on the next day, ie., on 10.01.2006. As per Section-8 of the Tamil Nadu Act 14 of 1982, the grounds of detention have to be served on the detenu not later than five days from the date of detention. In view of the fact that the grounds of detention and other materials were served on the detenu on 13.01.2006, ie., within the prescribed period, the said contention is rejected.

7. Learned counsel for the petitioner, by pointing out that the detenu was arrested on 25.12.2005, remanded on 26.12.2005 till 09.01.2006 and the detention order was passed on 09.01.2006; would submit that the Detaining Authority failed to mention at what time, the detention order was passed. He also contended that, since the remand was not extended on 09.01.2006, the detention order passed on the said date is illegal; and that the order was passed in a hurried manner to victimise the detenu as Goonda.

8. Here again, we are unable to accept the said contention since, on 26.12.2005, learned VIII Metropolitan Magistrate, George Town, Chennai-1, on production of the detenu/accused and a co-

accused at 5.20 P.M., after recording no complaints against the police, remanded them till 09.01.2006. It is not in dispute that the detention order was passed on 09.01.2006. Since, on the date of passing of the detention order, the detenu was in custody, based on a valid remand order, the contention that the detention order is illegal is liable to be rejected. Further, there is no compulsion on the part of the Detaining Authority to mention the time when he passed the order of detention dated 09.01.2006. Thus, we reject the said contention.

9. Learned counsel for the petitioner, by drawing our attention to para No.5 of the grounds of detention, wherein it is mentioned that, if the detenu wishes to make any representation to the Detaining Authority, he should address the same to Thiru.R.Nataraj, I.P.S., Commissioner of Police, Greater Chennai, Egmore, Chennai-8; would submit that the order passed by the second respondent is not legally maintainable since the second respondent has mentioned his name.

10. We are unable to accept the said contention also. The above reference makes it clear that the detenu is free to make representation to the Commissioner of Police, Greater Chennai, Egmore, and merely because there is a reference to the name of the Commissioner, it cannot be said that the detenu was prejudiced in making the representation.

11. Learned counsel for the petitioner further submitted that though the detention order contains all the details relating to the ground case, there is failure on the part of the Authority to mention the particulars relating to the adverse cases. We perused the grounds of detention. It contains the details relating to five adverse cases viz., date of occurrence, offences involved, Crime Number, Police Station and stage of the investigation. The Detaining Authority, after taking note of the involvement of the detenu in criminal activities viz., committing theft, in the adverse cases as well as the ground case occurrence that took place on 25.12.2005 and after referring to all the details, on being satisfied that the presence of the detenu in the society would affect public order and public peace, passed the detention order. We do not find any error or procedural flaw in passing the detention order. Accordingly, we reject the said contention also.

12. Finally, learned counsel for the petitioner, by drawing our attention to the documents available at page Nos.79 to 86 of the paper book supplied to the detenu, contended that in view of the discrepancies in mentioning the dates relating to arrest, confession statement etc., it is apparent that the respondents have foisted the ground case in order to detain him as Goonda. Learned Additional Public Prosecutor refuted the said contention by taking us through the details in the Special Report sent to the Detaining

Authority which is available in the paper book. We verified the same. As rightly pointed out, there is no discrepancy in mentioning the date of arrest or date of confession. The confession statement and statements of other accused are available in the paper book vide page Nos.73 to 86. Recovery mahazars, which are available at page Nos.33 and 52, make it clear that the stolen properties were recovered at the instance of the detenu and his associate. In all the documents, which have been duly attested, names of the detenu and his Associate Raja are specifically mentioned. Accordingly, we reject the said contention also.

13. In the light of what is stated above, we do not find any valid ground for interference. Habeas Corpus Petition fails and the same is dismissed.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

JI.

To

1. The Secretary to the Government,
Prohibition and Excise Dept., Secretariat,
Chennai 600 009.
2. The Commissioner of Police, Greater Chennai.
3. The Superintendent, Central Prison, Chennai.
(In duplicate for communication to detenu)
4. The Joint Secretary to Government, Public (Law and Order)
Fort St. George, Chennai-9.
5. The Public Prosecutor, High Court, Madras.

HCP No.425/2006.

PV (CO)
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